

This document contains the consolidated text resulting from the 30th round of negotiations (6-10 November 2017) on geographical indications in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.

Working document: GI text following July 2017 round (as sent to Mercosur in September 2016, blue, and to the EU in March 2017, green. Provisions agreed in black)

Article 12
Geographical Indications

Article 12.1
Protection of Geographical Indications

1. This Article applies to the recognition and protection of geographical indications originating in the territory of the Parties.
2. The Parties shall take the necessary measures to implement the protection of geographical indications referred to in paragraph 1 in their territories, determining the appropriate method for such implementation within their own legal system and practice.
3. The established geographical indications of a Party to be protected by the other Party shall only be subject to this Article if they are protected as geographical indications in the territory of the Party of origin in accordance with its system of registration and protection of geographical indications.
4. The Parties, having examined both the legislation of the other Party referred to in Annex I to this Article and the geographical indications of the other Party listed in Annex II, and having completed an objection procedure related to the geographical indications of the other Party listed in Annex II, undertake to protect since the date of entry into force of the Agreement those geographical indications in accordance with [EU. the level of protection laid down in this Article] [MCS the level of protection laid down in each Member Party legislation].

UNDER CONSIDERATION BY MERCOSUR

[MCS: 5. Protected geographical indications listed in Annex II will be protected as controlled designation of origin or equivalent according to its characteristics in the same conditions as provided by Parties to its national geographical indications.¹ (¹Denominación de Origen in Argentina, Paraguay and Uruguay, Denominação de Origem in Brazil, Protected Designation of Origin in European Union).]

Article 12.2
[EU: Addition of new Geographical Indications]

1. The Parties agree on the possibility to add in Annex II new geographical indications [MCS: or existing geographical indications not included in the Agreement, the latter on an exceptional basis,] to be protected pursuant to a mutually agreed decision taken by the Joint Committee set up in accordance with Article 12.10 and after having completed the steps described in Article 12.1.4 to the satisfaction of both Parties.]

~~1. The Parties agree that existing geographical indications not listed in Annex II of the present Agreement will follow the regular procedure of registration of geographical indications in the Parties.~~

Article 12.3
Scope of Protection for Geographical Indications

1. For the geographical indications listed in Annex II each Party shall provide the legal means, according to its domestic legislation, for interested parties to prevent:

- (a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the geographical origin of the good;
- (b) Any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention for the Protection of Industrial Property (1967) done at Stockholm on 14 July 1967.

[MCS: 2. Each Party shall also provide the legal means according to its domestic legislation, for interested parties to prevent:]

- [EU: any direct or indirect commercial use of a protected name for comparable products not complying with the product specification of the protected name, or that exploits the reputation of a geographical indication;]
- [MCS: the use of a geographical indication identifying wines and spirits – not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.]
- [EU: against any misuse, imitation or deceiving use of a protected name of a geographical indication; or against any false or misleading indication to a protected name of a geographical indication; or against any practice liable to mislead the consumer as to the true origin, provenance and nature of the product.]

Alternative wording to paragraph 2.1 and 2.3

[MCS: Any direct or indirect unfair commercial use or against any practice liable to mislead the consumer as to the true origin, provenance and nature of the product]

3. Protected geographical indications listed in Annex II shall not become generic in the territories of the Parties.

4. There shall be no obligation under this Chapter to protect geographical indications which are not or cease to be protected in their place of origin.

Article 12.4

[EU: Right of Use of Geographical Indications

1. A [MCS: name-protected-geographical indications] under this Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks which conform to the corresponding specification.

MERCOSUR SHALL PROVIDE TEXT

2. Once a geographical indication is protected under this agreement, the use of such protected name shall not be subject to any registration of users, or further charges.

3. Indications, abbreviations and symbols defined under legislations listed in Annex I may be used in the territories of the Parties, provided that they are used for products protected in accordance with legislations listed in Annex I of the Party in which the product originates, that their use is in conformity with this legislation, and provided that the product is produced in conformity with the corresponding product specification.]

Article 12.5

Relationship with trademarks

1. [MCS: Where a GI is protected under this Agreement, the Contracting Parties shall refuse the registration of a trademark with the same geographical name for the same product protected by the geographical indication, provided that an application for registration of the trademark was submitted after the date of application for protection of the GI on the territory concerned. Trademarks registered in breach of this subparagraph shall be invalidated, according to the national legislation of the contracting parties.]

1. [EU: Where a geographical indication is protected under this Agreement/Article, Parties shall refuse the registration of a trademark for the same or a like product¹ [MCS: protected by the geographical indication], the use of which would contravene Article 12.3, provided that an application for registration of the trademark was submitted after the date of application for protection of the geographical indication on the territory concerned. Trademarks registered in breach of this subparagraph shall be invalidated according to the legislation of the Parties.]

¹ For the purposes of Article 12.5, a "like product" is defined as a product falling within the same category of product in the Party's register where the trademark protection is sought as the product for which a geographical indication has been registered.

2. For geographical indications listed in Annex II at the date of entry into force of the Agreement, the date of submission of the application for protection referred to in [paragraph 1] shall be the date of the publication of the opposition procedure in the respective territories.

3. For geographical indications referred to in Article 12.2, the date of submission of the application for protection shall be the date of the transmission of a request to another Party to protect a geographical indication.

4. Without prejudice to paragraph 5, the Parties shall [MCS: may] protect the geographical indications referred to in Annex II also where a prior trademark exists. A prior trademark shall mean a trademark [MCS: the use of which corresponds to one of the situations referred to in Article 12.3.2], which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

Such trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, [MCS: provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties of the party where the trademark has been registered or established.]

In those cases where a geographical indication coexists with a prior trademark, the geographical indication must only be used in a descriptive way and shall never be used in a way that could mislead the public to consider it as a trademark.

5. The Contracting Parties shall not be obliged to protect a GI in the light of a famous, reputed or well-known trademark; protection is liable to mislead the consumer as to the true identity of the product.

5. A Party shall not require the other Party to protect a geographical indication [MCS: in accordance with Article 12.2] where, in the light of a famous, reputed or well-known trademark, protection is liable to mislead the consumer as to the true identity of the product.

6. Without prejudice to paragraphs 4 and 5, the Parties shall protect the geographical indications referred to in Annex II also where a prior trademark exists. A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Article 12.3.2, which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

Such trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.

Article 12.6
[EU: Enforcement of Protection]

The Parties shall [MCS: provide the legal means for interested parties to] enforce the
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protection provided for in Articles 12.3 to 12.5 by via appropriate [MCS: administrative] action by public authorities [MCS: including on their own initiative] within their own legal system and practise, [MCS: and via judicial steps. The Parties shall also enforce such protection at the request of provide for administrative action in respect of complaints by an interested party.]

[MCS: The Parties shall enforce the protection of geographical indications referred to in paragraph 1 in their territories, within their own legal system and practice.]

Article 12.7 *Homonymous Geographical Indications*

1. [MRC: In the case of homonymous geographical indications of the Parties for products falling within the same product category, both will coexist, and each Party shall determine the practical conditions under which the homonymous indications in question shall be differentiated from each other, without altering the name protected in the other Party, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

For the purpose of this paragraph the applicable date is the date of entry into force of this chapter.]

1. [EU: If geographical indications are wholly or partially homonymous, protection shall be granted to each indication provided there is sufficient distinction in practice between conditions of usage and presentation of the names, so as to not mislead the consumer.

2. Where a Party, in the context of negotiations with a third country proposes to protect a geographical indication from that third country, and the name is homonymous with a geographical indication from the other Party, the latter shall be informed and be given the opportunity to [MCS: present opposition comment] before the name is protected.]

[MCS: 3. Where a Party, in the context of negotiations with a third country obtains recognition to protect a geographical indication, and the name is homonymous with a trade mark or a generic name which is used by the other Party to export a good to that third country, the said recognition shall not prevent the continuation of the use of the generic name in that third country.]

Article 12.8 *Exceptions*

1. If a translation of a geographical indication is identical with or contains within it a term customary in common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical with but contains within it such a term, the provisions of this Article shall not prejudice the right of any person [MCS: individual and\or corporation] to use that term in association with that product [MCS: in the territory of that Party.]

2. [MCS: A contracting Party shall not be required to protect as a GI a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.]
2. [EU: Nothing shall prevent the use in the territory of a Party, with respect to any product, of a customary name of a plant variety or an animal breed, existing in the territory of that Party as of the date of entry into force of this Agreement.]
3. [MRC: An individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.]
3. [EU: Nothing shall prevent the use in the territory of a Party of an individual component of a multi-component term that is protected as a geographical indication in the territory of that Party if such individual component is a term customary in the common language as the common name for the associated good.]
4. The provisions of this Chapter shall not prejudice the right of any person to make commercial use of that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

MCS alternative wording

[MCS: 4. The provisions of this Chapter shall not prejudice the right of any person individual and\or corporation to use that term in association with the product, except where such name is used in such a manner as to mislead the public.]

[MCS: 5. Nothing in this Article shall prevent the use by nationals of MERCOSUR countries within or without the territory of each Party of a geographical indication of the European Union with respect to goods for which the relevant indication is identical with the term customary in common language as the common name for such goods in the territory of MERCOSUR countries.]

Article 12.10

Other protection

~~An individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.~~

Article 12.9

[EU: General Rules]

1. Import, export and marketing of products corresponding to the names referred to in

Annex II shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market. [MCS: For wine products and spirits imported from MERCOSUR listed in Annex II, the existence in the EU of traditional expressions used on the label, cannot impede or restrict the placed in the EU market of those MERCOSUR products.]

2. Any matter arising from product specifications of protected geographical indications shall be discussed in the [Joint Committee] established in Article 12.10.

3. ~~The geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.~~

[EU has moved this paragraph to Article 12.3]

3. A product specification referred to in this agreement shall be the one approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.]

Article 12.11 Cooperation and Transparency

1. ~~The Contracting Parties shall, either directly or through the [Joint Committee] established pursuant to Article 12.13, remain in contact, directly on all matters relating to the implementation and the functioning of this Agreement [Article]. In particular, a Party may request from the other Party information relating to product specifications and their amendments, as well as contact points for control provisions.~~

2. ~~Each Contracting Party may make publicly available the product specifications or a summary thereof and contact points for control provisions corresponding to the GIs of the other Party protected pursuant to this Agreement [Article], in Portuguese, Spanish or English.~~

[EU suggests to fusion this Article with the following one on Joint Committee, etc.]

Article 12.10 [Joint Committee], cooperation and transparency

1. The Parties agree to set up a [Joint Committee] consisting of representatives of the European Union and MERCOSUR countries with the purpose of monitoring the development of this Article and of intensifying their co-operation and dialogue on geographical indications.

2. The [Joint Committee] adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the European Union and in the MERCOSUR countries, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than [90] days after the request.

3. The [Joint Committee] shall also see to the proper functioning of this Article and may

consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) taking decisions amending Annex I as regards the references to the law applicable in the Parties,
- (b) ~~amending Annex II as regards the criteria to be included in the opposition procedure;~~
- (b) taking decisions modifying Annex II as regard to geographical indications,
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications,
- (d) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article.

[EU: To this end, Parties shall notify each other if a geographical indication listed in Annex II ceases to be protected in the territory of the Party concerned. Following such notification, the Joint Committee shall modify Annex II in accordance with Article 12.10.3(b) to end the protection under this Agreement.]

[EU: Only the Party in which the product originates is entitled to request the end of the protection under this Agreement/Article of a geographical indication listed in Annex II.]

4. Parties shall, either directly or through the [Joint Committee], remain in contact directly on all matters relating to the implementation and the functioning of this Article. In particular, a Party may request from the other Party information relating to product specifications and their amendments, as well as contact points for control provisions.

5. Parties may make publicly available the product specifications or a summary thereof and contact points for control provisions corresponding to the geographical indications of the other Party protected pursuant to this Article, in Portuguese, Spanish or English.

ANNEX I
Legislation of the Parties

1. ARGENTINA

2. BRAZIL

3. PARAGUAY

4. URUGUAY

5. EUROPEAN UNION

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012, with its implementing rules, on quality schemes for agricultural products and foodstuffs.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 on the common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 and its implementing acts.

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/1991.

ANNEX II

(Elements for registration and control of geographical indications referred to in Article X.31, sections 1 and 2)

1. A register listing geographical indications protected in the territory;
2. An administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one or more States, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
3. A requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
4. Control provisions applying to production;
5. A right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided he complies with the product specification;
6. An objection procedure that allows to take into account the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property;
7. A rule that protected names may not become generic;
8. Provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned.

ANNEX II

Geographical indications of products as referred to in Article 12.1

Agricultural products, processed agricultural products, fish and fishery products other than wines, spirits and aromatised wines of the European Union to be protect in the Mercosur countries:

Member State of the European Union Name to be protected / product type

[...]

Agricultural products, processed agricultural products, fish and fishery products other than wines, spirits and aromatised wines of the Mercosur countries to be protect in the European Union:

ANNEX II...

Geographical indications of products as referred to in Article 12.1

Wines, spirits and aromatised wines of the European Union to be protected in the Mercosur countries:

Member State of the European Union Name to be protected / product type

Wines, spirits and aromatised wines of the Mercosur countries to be protected in the European Union